

complaint

Mr and Mrs P have complained about the way National House-Building Council (NHBC) has handled their claim under their new home building warranty after they suffered problems with their plumbing.

background

In 2013, Mr and Mrs P bought a new house. It came with a ten year building warranty underwritten by NHBC which provided cover for defects found and reported in the first two years, and damage caused by defects in years three to ten. Initial responsibility for putting right any defects lay with the house builder. If Mr and Mrs P were dissatisfied with the builder's response to reported defects, they could make a claim to NHBC. Before providing cover, NHBC could ask the parties to make use of a resolution service to determine what action, if any, the builder was required to take. If the builder failed to comply with the recommendations in a resolution service report then NHBC would provide cover under the warranty.

Shortly after moving in, Mr and Mrs P reported problems with their boiler and plumbing system. They became dissatisfied with the builder's response and so made a claim to NHBC. In November 2015, NHBC issued a resolution report requiring that the builder obtain an independent report on the boiler. This report was provided in December 2015. It concluded that the boiler and flue were not defective.

Mr and Mrs P continued experiencing problems with their boiler. In July 2016, NHBC accepted liability for this under the policy and arranged for the boiler to be repaired.

In March 2017, the issues with the boiler started re-occurring. Mr and Mrs P contacted NHBC who arranged for a further repair to be carried out and, in the meantime, arranged on several occasions for an emergency plumber to attend to restore Mr and Mrs P's heating and hot water. The repair still didn't resolve matters and so, in May 2017, NHBC arranged for a new boiler to be installed.

Around this time, Mr and Mrs P also drew NHBC's attention to a damp patch which had appeared on their lounge ceiling. NHBC arranged for its contractor to investigate this. It was found to be caused by a leaking pipe. The contractor carried out a repair.

In August 2017, Mr and Mrs P reported that the damp patch was worsening. NHBC concluded that the repaired piece of pipework needed to be replaced. However, it had difficulty in sourcing a replacement part because the pipework which had been used by the housebuilder was now obsolete. In the meantime, Mr and Mrs P noted problems with the replaced boiler and reported them to NHBC.

Between October 2017 and May 2018, NHBC issued several final response letters to complaints from Mr and Mrs P and agreed to pay a total of £1,750 compensation for its poor service.

Eventually, in May 2018, NHBC told Mr and Mrs P it had managed to find a replacement part for the pipework and that its contractor would visit to install this and to carry out other outstanding work.

Mr and Mrs P were unhappy at NHBC's proposed solution. They said that a number of contractors had reported that the only way to remedy the problems with their plumbing was to replace the obsolete pipework completely. They felt that NHBC was trying to get away with a bodged fix which would result in further problems down the line. They also complained that NHBC hadn't addressed other problems they'd identified, which were: the non-repair of an unsightly hatch which had been made in their lounge ceiling to access the leaking pipework; a faulty valve in the airing cupboard; a kitchen cupboard by the boiler which had been taken apart and not reassembled; and a problem of fumes from the boiler re-entering the property due to a faulty flue.

NHBC issued a final response letter saying that it was confident the pipe repair would be successful and so there was no need to replace the entire system of pipework. It noted that its contractor had now tidied up the hatch but explained this would need to be re-opened to allow the repair to take place. It confirmed that the ceiling would be made good once it knew the repair had been successful. It said the other outstanding items for which it was liable would be attended to once the pipework had been repaired.

Mr and Mrs P were unhappy with NHBC's response. They continued to believe that the obsolete pipework needed replacing in its entirety. They referred their complaint to us.

I issued a provisional decision explaining why I was minded not to uphold the complaint. My findings were as follows:

"pipework repair and other problems"

The policy requires NHBC, once it has accepted liability under the warranty, to put right any damage caused by a defect in certain aspects of the property.

The policy defines a "defect" as follows:

"The breach of any mandatory NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means."

The policy defines "damage" as follows:

"Physical damage to a Home caused by a Defect"

In respect of the pipework, it is accepted that there is a defect with a particular joint which is causing a leak. I understand that NHBC has fixed this temporarily and now has a part which it says will allow it to carry out a permanent fix. It says this fix will also resolve the problems Mr and Mrs P have experienced with the new boiler. In contrast, Mr and Mrs P say that NHBC has been told by its own contractors that to make an effective and long-lasting repair the entire system has to be replaced.

I can see that in September 2017, NHBC's contractor reported that it couldn't find a replacement part and so the entire system would need to be replaced. NHBC was reluctant to accept its contractor's view, noting that the contractor might have a financial interest in suggesting this course of action. It therefore arranged for an independent company (which I'll call "E") to provide a report on the plumbing and boiler issues. E issued this report in January 2018. In respect of the defective piece of piping, E said that, if a replacement part or adaptor

couldn't be found, consideration should be given to replacing the plumbing system. This is therefore not an unconditional recommendation that the entire system should be replaced.

While it was seeking an appropriate replacement part, NHBC asked its contractor to provide a quote for the complete re-plumbing of the property just in case this should eventually be needed. The contractor re-visited the property in March 2018 to carry out a survey for the purposes of providing this quote. It appears that the contractor may have told Mr and Mrs P that the entire system of pipework needed replacing and led them to believe that NHBC had agreed to this. However, NHBC hadn't agreed to this and was still seeking an alternative solution. And it appears that the contractor's belief that the entire system needed to be replaced was predicated on the assumption that no replacement part was available.

In May 2018, NHBC told Mr and Mrs P it had found a replacement part to enable the repair to take place and that its contractor would then see to the other outstanding issues. NHBC hasn't accepted that the pipework as a whole is defective. And it points out in its final response letter that the rest of the pipework is performing adequately and not causing damage. This seems to accord with E's conditional finding regarding the need to replace the whole system only if a replacement part couldn't be found.

Taking everything into account, while I acknowledge it took a long time for NHBC to find a suitable replacement part, I think it is reasonable for NHBC to now ask to carry out its proposed repair. I understand Mr and Mrs P's reluctance to allow this, not least because they say they don't believe this will work. But I've seen no expert opinion to explain why this should be so. If, of course, Mr and Mrs P allow the repair to go ahead and it proves ineffective, then NHBC shall have to consider another means of addressing the problem which or may not then involve replacement of a greater amount of pipework. But at this stage I have no reasonable grounds for believing it is likely to fail.

I understand that Mr and Mrs P have now allowed NHBC to carry out the repairs to the hatch, the faulty valve and the kitchen cupboard and that these issues are now resolved.

fumes from the boiler

Not all complaints that are brought to this service are ones we can look at. When we receive a complaint we always check whether it's within our jurisdiction. We do this by considering the rules laid down in the Financial Conduct Authority Handbook.

The rules say that we can only consider a complaint if it relates to an act or omission by a firm in carrying on regulated activities. The rules go on to say that, for an insurer those activities are effecting or (more usually) carrying out contracts of insurance.

NHBC isn't an insurer in the conventional sense. Part of its remit is to provide insurance covering (amongst other things) damage caused by defects in years three to ten after a property has been completed. It also carries out a number of other (non-insurance, non-regulated) activities including setting standards for UK house builders, ensuring that new homes are built to certain standards and – most relevant to this complaint - providing a dispute resolution service in the first two years of the warranty. The dispute resolution service is intended to help the builder and the homeowner resolve any differences they may have in that period. The primary responsibility for putting right defects during this time lies with the builder.

This service doesn't consider NHBC to be carrying out a regulated activity until:

- A resolution report has been issued, and
- The builder has failed to complete the work in the resolution report by the deadline set.

In respect of the problem with the boiler fumes, I can see that in November 2015 NHBC issued a resolution report requiring the builder to obtain an independent report on the boiler. This was done and the report concluded that the flue installation was compliant with all relevant standards. This meant there was no further work for the builder to complete and therefore NHBC hadn't started carrying out regulated insurance activity in respect of the flue. The matter, as it stood at that time, is therefore outside of my jurisdiction. I can't consider the merits of the complaint in this respect.

A report by NHBC's contractor in June 2017 concluded that the reason Mr and Mrs P were sometimes experiencing the smell of fumes was because the wind was blowing the fumes in through their bedroom window. It recommended that the flue be extended by about another three feet so that it was above the gutter. However, NHBC still denied that there was a defect which needed addressing. The matter, as it stood at that time, is therefore outside of my jurisdiction. I can't consider the merits of a complaint in this respect.

In January 2018, E issued its report in which it concluded that the flue did not comply with Chapter 8.1 of NHBC's Standards which requires "Installation of space heating systems shall comply with relevant codes and standards and ensure safe and satisfactory operation". It recommended that the flue be rotated through 90°.

In February 2018, NHBC issued a resolution report update in which it accepted E's findings. It was at this point that this matter became subject to my jurisdiction.

NHBC sought to arrange for a contractor to visit Mr and Mrs P's property to carry out E's recommended repair. I think this was reasonable. Mr and Mrs P haven't allowed the contractor to carry out the repair, presumably because they think it won't work. However, until they allow this repair to take place, I can't reasonably require NHBC to do anything more."

I invited both parties to comment on my provisional decision.

Mr and Mrs P didn't accept my provisional decision. Their comments can be summarised as follows:

- NHBC had been inconsistent in its handling of the claim in that it had relied on the advice of its chosen contractors when this suited it but had chosen to ignore the advice that the entire system of pipework needed changing.
- It was scandalous that the housebuilder had used pipework which had become obsolete so quickly following completion of the build. The plumbing system had never worked properly and they were still suffering regular boiler failure.
- NHBC wasn't proposing to repair the pipework using a proper replacement part; it was using a cheap DIY alternative whereby copper inserts would be joined to a plastic pipe. They considered this was unacceptable.
- NHBC had also been inconsistent in its position on whether the flue was defective, first of all denying this but later accepting it.

- The reason the flue hadn't been rotated 90° wasn't because of their obstruction but because NHBC had repeatedly failed to brief its contractors that this work needed doing. Eventually, out of frustration, Mr P rotated the flue himself but this still hadn't resolved the problem of fumes in the kitchen which they believed could only be addressed by extending the flue above the roofline.
- Overall, the plumbing system in their home is of an inadequate standard and it is unacceptable that they should have to put up with the ongoing problems. NHBC should simply replace it.

NHBC didn't comment on the provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the opinion that this complaint should not be upheld.

I recognise that NHBC didn't follow the advice of its contractor who said in September 2017 that the entire system of pipework needed to be replaced but I have explained in my provisional decision why I think it was reasonable for NHBC to take this position. The fact that the pipework is obsolete doesn't necessarily mean it is either defective or causing damage. I sympathise with Mr and Mrs P that they are still suffering problems with their boiler but I still consider it is reasonable for NHBC to carry out its proposed repair which it believes will resolve the issue. I have noted Mr and Mrs P's concerns that NHBC's repair will not be using a part provided by the original manufacturer but I don't think the nature of the repair matters as long as it proves to be effective and long-lasting.

With regard to the flue, I have explained why I can't consider NHBC's actions until it accepted responsibility under the policy in February 2018. I note Mr and Mrs P's comments that the reason for the flue not being rotated was NHBC's failure to brief its contractors. However, I have seen email correspondence in June 2019 in which Mr and Mrs P tell NHBC that they will not allow its contractor to visit if it is only to rotate the flue; they say they want the contractor to either extend it or relocate it. If Mr P has since turned the flue himself and it has made no difference to the problem, he needs to make NHBC aware of this so it can consider what to do next.

In light of the above, and the fact that NHBC offered no comment, I see no reason to change my provisional decision.

my final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 21 December 2019.

David Poley
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